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10/076,035	02/14/2002	L. Taizo Toelken	474-4	7398

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/076,035

Applicant(s)

TOELKEN, L. TAIZO

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 and 7. 6) ☐ Other: .

## **Detailed Action**

### ***Preliminary Amendment***

1. Applicant's preliminary amendment (paper no. 4) dated 6-27-02 has been received and the changes have been taken into consideration.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Eggs are the claimed invention and eggs are naturally occurring phenomena in that a naturally occurring animal such as the chicken produces them naturally.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to how the method as claimed is carried out in that the eggs are disposed of prior to sorting and thus with the eggs already disposed of the sorting step is moot and unnecessary.

Claims 9-10 depend from rejected claim 8 and include all of the limitations of claim 8 thereby rendering these dependent claims indefinite.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-8, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,426,977 to Johnston et al.

Referring to claims 1, 8 and 15, Johnston et al. discloses a method and apparatus for determining premium grade avian eggs from sub-grade avian eggs based on shell characteristics, comprising, providing a plurality of eggs, oscillating the shells of each egg by a non-contacting

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source of ultrasonic waves – 34 to produce such a signal from the oscillating shells that is detectable by a non-contacting detector in response to blocking the path of the ultrasonic waves from the source – see for example figure 1c and columns 1-6. Johnston et al. further discloses the egg is admitted between the source and the detector – see for example figure 1c. Johnston et al. further discloses a processor for determining the eggs as premium grade or not based upon analysis of the detected signal – see for example figure 1c and columns 1-6 where it is inherent that a processor is used to determine the condition of the eggs.

Referring to claim 2, Johnston et al. discloses the detected signal comprises an information portion that is analyzed for a positive indication comprising at least one sufficiently steady and strong peak – see for example figures 2-3 and columns 1-6.

Referring to claim 3, Johnston et al. discloses the analysis comprises integrated response analysis of the detected signal – see for example columns 1-6.

Referring to claim 4, Johnston et al. discloses the positive indication is correlatable to a given quality determination of egg shell quality which in turn is associated with such a quality determination of the avian egg as relating to fertility or hatching or hatchling viability, or alternatively as being of sufficient quality for human consumption – see for example columns 1-6.

Referring to claim 5, Johnston et al. discloses the detected signal comprises an information portion that is analyzed for either or both a positive indication comprising at least one sufficiently steady and strong peak and/or a negative indication comprising relatively unsteady and weak signals across the width of the information portion – see for example figures 2-3 and columns 1-6.

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Referring to claims 7 and 14, Johnston et al. discloses eggs determined according to the methods of claims 1 and 8 – see for example figure 1c and columns 1-6.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al. as applied to claims 1, 8 and 15 above, and further in view of U.S. Patent No. 5,017,003 to Keromnes et al. Johnston et al. does not disclose the eggs qualified for premium quality are graduated to hatchery operations. Keromnes et al. does disclose the eggs qualified for premium quality are graduated to hatchery operations – see for example column 1. Therefore it would have been obvious to one of ordinary skill in the art to take the method and apparatus of Johnston et al. and add the premium eggs move on to hatchery operations of Keromnes et al., so as to make the process more efficient in that only the “good” eggs are further processed thus eliminating wasteful time and effort to process the “bad” eggs.

Claims 9-12 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al. as applied to claims 8 and 15 above, and further in view of U.S. Patent No. 5,728,939 to Moayeri.

Referring to claims 9 and 16, Johnston et al. further discloses the detected signal is transformable into a profile which comprises an information portion that is analyzed for a positive indication of premium grade comprising at least one sufficiently steady and strong peak – see for example figures 2-3 and columns 1-6. Johnston et al. does not disclose the detected signal is transformable into a profile of detected signal strength versus time. Moayeri does disclose the detected signal is transformable into a profile of detected signal strength versus time – see for example figures 5a-5b and columns 9-11. Therefore it would have been obvious to one of ordinary skill in the art to take the method and apparatus of Johnston et al. and add the signal being transformed into a profile of signal strength versus time of Moayeri, so as to allow the user of the apparatus to easily and quickly distinguish between a “good” and “bad” egg.

Referring to claims 10 and 17, Johnston et al. further discloses the analysis comprises integrated response analysis of the detected signal – see for example columns 1-6. Johnston et al. does not disclose the analysis comprises integrated response analysis of the detected signal’s strength versus time values. Moayeri does disclose the analysis comprises integrated response analysis of the detected signal’s strength versus time values – see for example figures 5a-5b and columns 9-11. Therefore it would have been obvious to one of ordinary skill in the art to take the method and apparatus of Johnston et al. and add the signal being analyzed via the signal strength versus time values of Moayeri, so as to allow the user of the apparatus to easily and quickly distinguish between a “good” and “bad” egg.

Referring to claims 11 and 18, Johnston et al. as modified by Moayeri further discloses the positive indication of premium grade is correlatable to a given quality determination of egg shell quality which in turn is associated with such a quality determination of the avian egg as

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relating to fertility or hatching or hatchling viability, or alternatively as being of sufficient quality for human consumption – see for example columns 1-6 of Johnston et al.

Referring to claims 12 and 19, Johnston et al. further discloses the detected signal is transformable into a profile which comprises an information portion that is analyzed for either or both a positive indication of premium grade comprising at least one sufficiently steady and strong peak and/or a negative indication of premium grade comprising relatively unsteady and weak signals across the width of the information portion – see for example figures 2-3 and columns 1-6. Johnston et al. does not disclose the detected signal is transformable into a profile of detected signal strength versus time. Moayeri does disclose the detected signal is transformable into a profile of detected signal strength versus time – see for example figures 5a-5b and columns 9-11. Therefore it would have been obvious to one of ordinary skill in the art to take the method and apparatus of Johnston et al. and add the signal being transformed into a profile of signal strength versus time of Moayeri, so as to allow the user of the apparatus to easily and quickly distinguish between a “good” and “bad” egg.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to egg inspection and sorting devices in general:

U.S. Pat. No. 3,503,501 to Seaborn – shows oscillating eggshell crack detector

U.S. Pat. No. 3,511,367 to Bliss – shows eggshell crack detector



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U.S. Pat. No. 3,744,299 to Bliss – shows oscillating eggshell crack detector

U.S. Pat. No. 5,062,296 to Migliori – shows ultrasonic detection device

U.S. Pat. No. 5,131,274 to Schouenborg – shows oscillating eggshell detector

U.S. Pat. No. 5,277,320 to Corkill et al. – shows non-contacting eggshell detector

U.S. Pat. No. 5,485,751 to Karbach et al. – shows ultrasonic detection device

U.S. Pat. No. 5,696,325 to Coucke et al. – shows eggshell crack detection device

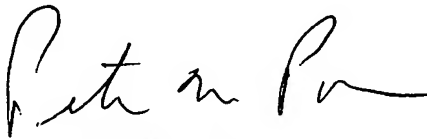
U.S. Pat. No. 5,952,577 to Passi – shows ultrasound device using IR analysis

JP Pat. No. 62-151749 to Fukuma – shows ultrasound eggshell detection device

DE Pat. No. 3904675 to Dermitzakis et al. – shows eggshell crack detector

7. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

  
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